

Notice of Allowability

Application No.

10/721,996

Examiner

Ganapathirama Raghu

Applicant(s)

SOMERVILLE ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12/21/06.
2. ☒ The allowed claim(s) is/are 1 and 8.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Detailed Action

Amended claims 1 and 8 are pending in this application for examination.

Applicants' amendments and arguments filed on Dec. 21, 2006, have been fully considered and are deemed to be persuasive to overcome the rejections previously applied. Rejections and/or objections not reiterated from previous office action are hereby withdrawn.

Priority

Acknowledgment is made of applicant's claim for the following priority for the instant claims. This application is a CIP of 09/686,234 filed on 10/11/2000 ABN, which claims the benefit of 60/159,369 filed on 10/14/1999.

Drawings

The drawings are accepted.

EXAMINER'S AMENDMENT

An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it must be submitted no later than the payment of the issue fee.

Authorization for this Examiner's amendment was given in a telephone interview with Brian J. Lally, (Reg. No. 51, 911) on 01/31/2007.

The application has been amended as follows:

In the Specification:

First paragraph, line 3 insert "now abandoned," after "Oct. 11, 2000,".

In the claims:

Cancel claims 4-7 and 10-11.

Allowable Subject Matter

Claims 1 and 8 are allowed.

The following is an examiner's statement of reasons for allowance:


All elected claims, 1 and 8, are limited to isolated nucleic acid molecules of the nucleotide sequence of SEQ ID NO: 1 and SEQ ID NO: 4, encoding an isoxaben resistant cellulose synthase. Following a diligent search it was determined that the closest prior art disclosed by Arioli et al., (US Patent No.: 6,495,740), a Cellulose and/or Beta-1,4-glucan synthase, that has 99.8% and 99.7% sequence homology to SEQ ID NO: 1 and 4 of the instant application. Therefore, the prior art neither teaches nor suggests an isolated polynucleotide comprising the nucleotide sequence of SEQ ID NO: 1 and 4 and said polynucleotides encoding an isoxaben resistant cellulose synthase. The utility of said polynucleotides, as encoding a polypeptide with an isoxaben resistant cellulose synthase, is credible based on the ability of said polynucleotides when expressed in plants to confer resistance against herbicide isoxaben. Said polynucleotides encoding a polypeptide with an isoxaben resistant cellulose synthase has real-world utility and permits generation of transgenic plants with isoxaben herbicide resistance.

Any comments considered necessary by applicant must be submitted no later than the payment of issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ganapathirama Raghu whose telephone number is 571-272-4533. The examiner can normally be reached on 8 am to 4.30 pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on 571-272-0928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of the application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

Ganapathirama Raghu, Ph.D.
Patent Examiner
Art Unit 1652
Jan. 31, 2007.


REBECCA E. PROBY
PRIMARY EXAMINER
GROUP 1800
1600